

March 22, 2007

Mr. Bischoff called the regular meeting of the Union Township Planning Board/Board of Adjustment to order at 7:05 p.m. The Sunshine Statement was read.

Members Present: Mrs. Nargi, Mr. Martin, Mr. Lukasik, Mr. Kirkpatrick, Mr. Walchuk, Mr. Taibi, Mr. Scott (8:55 p.m.), Mr. Bischoff

Members Absent: Mr. Mazza, Mr. Brandt

Others Present: Atty. William Sutphen, Carl Hintz, Rick Roseberry, Atty. Lloyd Tubman, Atty. Carl Bisgaier, Robert Levitsky, Atty. Michael Gross, John & Kathy Corcoran, Aleta Lambert, Michelle McBride, David Stern, Brian Dorr Robert O'Neill, Tom Apostolik, Betsy Piner, Arthur Nevins

Milligan Farms: Block 22, Lot 20, 80 Pittstown Road: Memorialization of Resolution: Mr. Kirkpatrick made a motion to memorialize the Resolution. Mr. Lukasik seconded the motion.

Vote: Ayes: Mr. Kirkpatrick, Mr. Lukasik, Mrs. Nargi, Mr. Martin, Mr. Walchuk, Mr. Taibi, Mr. Bischoff

Fallone Properties, LLC: "Renaissance" Block 22, Lot 34, Perryville Road: Issue of Completeness: Mr. Roseberry recommended the application be deemed complete. He said there were a series of waivers requested. The request for the waivers was carried over from the Preliminary application. Mr. Kirkpatrick asked that more quantitative information be provided, as required by the Environmental Impact Checklist. Mr. Kirkpatrick made a motion to deem the application complete, with that condition. Mrs. Nargi seconded the motion.

Vote: Ayes: Mr. Kirkpatrick, Mrs. Nargi, Mr. Martin, Mr. Lukasik, Mr. Walchuk, Mr. Taibi, Mr. Bischoff

Toll Bros/Lookout Pointe: Block 11, Lot 8, Rupell Road & Bank Street: Extension of Time to Act: Atty. Carl Bisgaier gave a brief overview of progress at the site and why Toll was requesting the Extension. The Board requested Toll provide information about the proper recording of deeds. The information is to be provided within 10 days. The wells located on the property are to be capped since water service is now being provided by the Town of Clinton. Mr. Kirkpatrick made a motion to grant a One-Year Extension. Mrs. Nargi seconded the motion.

Vote: Ayes: Mr. Kirkpatrick, Mrs. Nargi, Mr. Martin, Mr. Lukasik, Mr. Walchuk, Mr. Taibi, Mr. Bischoff

Highlands Report: Carl Hintz had prepared a "Draft" letter to the Highlands Council that voiced the Board's concerns. **Special Notice:** Mr. Bischoff said UTEC Chairman Robert Nargi had contacted him about the May 8th, 2007 meeting of the Commission, at which time Atty. Tom Borden for the Highlands Council will be speaking. Mr. Nargi

extended an invitation to the Planning Board and Township Committee to attend the meeting.

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Atty. Patrick Mullaney, representing Red Hills Quarry, asked that the Quarry be taken from the Conservation Category and placed in the Planned Community Category. Mr. Hintz had spoken to Mr. Bischoff and Atty. Mullaney. Mr. Hintz said the letter could include a statement that the property should be in a Planned Community/Specially Planned Area, rather than in the Conservation and Protection Areas, as designated by the Highlands Council.

Mrs. Nargi recused herself prior to the Pilot Hearing.

Mr. Bischoff mentioned the Pilot Hearing would begin. Mr. Scott, who has been the presiding at the meetings for purposes of continuity, would be arriving later.

Pilot Travel Centers: Block 11, Lot 24.03, 68 Route 173: Atty. Michael Gross, representing applicant, said Pilot took title to the property on February 28, 2007. Mr. Gross also said he had a correction for the Board. However, he would wait until Mr. Scott arrived to address that issue. Atty. Gross said he understood that Mr. McDonough had completed his direct testimony, subject to questions from the Board and Atty. Janacek. Mr. Gross asked Mr. McDonough a question based upon prior testimony. He asked Mr. McDonough, who remained under oath, about a comment made by Mr. Scott with respect to the 1993 Resolution. Mr. Bischoff said the Resolution was in 1994 and Mr. McDonough replied "Yes". Mr. Scott asked if the approvals that were contemplated in that plan were fully built out. Mr. McDonough said they were not. He said there were two phases. Phase I pertained mostly to site improvement and that part was completed. That included existing pavement, canopies and landscaping and some subsurface improvements. The two portions of the building that were contemplated for expansion were never done. That expansion would have included expanding the truckers' store, convenience store, restaurant in the front and expansion of the back of the building for additional uses.

Mr. Bischoff said it would be Mr. Hintz's turn to ask questions of Pilot's Planner. Mr. Hintz said he understood the next portion should be to cross-examine Mr. McDonough. Mr. Hintz thought the next series of presentations by the Board should be from their Professionals about findings. Mr. Bischoff asked Board members for questions regarding Mr. McDonough's testimony. Mr. Taibi asked Mr. McDonough about the sources of revenue from fuel versus the convenience store, which is proposed to be expanded. Mr. McDonough said the source of revenue was important with respect to whether this was a D-1 or D-2 Variance. Mr. McDonough had indicated that about 90% of sales would come from fuel. Mr. Taibi believes the expanded convenience store would generate a great deal of traffic and traffic is the greatest concern. Mr. Kirkpatrick asked Mr. McDonough to explain how eliminating the truck repair facilities, eliminating the sit-down restaurant and reducing restrooms and laundry facilities would further the purpose of the project, which is to give the motoring public a place to relax, recover and refuel

vehicles. Mr. McDonough said that Pilot is the number one National Chain with respect to travel centers and that would be an attraction to the motoring public.

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He also said there will be a reduced sit-down portion of the restaurant. Mr. McDonough said there are opportunities elsewhere for truck repair. Mr. Kirkpatrick said he drove out from the Port of Newark and did not see any vehicle repair facilities. He was concerned about truckers being unable to find a truck repair site. Mr. McDonough said he had not done an evaluation of truck repair facilities. He said Pilot had decided it was not a necessary component of its business. Mr. Kirkpatrick asked Mr. McDonough about his testimony regarding an increase in ratables and if he had information to back that statement up. Mr. McDonough said it was "just a guess".

Mr. Kirkpatrick asked about the number of employees, their salaries and level of skills. Mr. McDonough said there will be 12 employees, one less than the present. He did not have answers to the other questions. Mr. Kirkpatrick asked about crime levels. Mr. McDonough said Police reports showed crimes to be incidental in nature. Those crimes included shoplifting and failure to pay with a credit card or to pay for gas. They did not see a number of violent crimes. Mr. Kirkpatrick asked Mr. McDonough about his testimony on the E.I.S. He specifically sought information on anticipated changes at the site and what measure would be taken to reduce or maintain existing emission levels. Mr. McDonough said he believed that Messrs. Mulligan and Staigar addressed those issues. He relied upon the underlying opinions of fellow experts. Mr. Kirkpatrick asked why Mr. McDonough's montage of pictures was of older and less attractive buildings along the Route 173/78 Corridor. Mr. McDonough said he wanted to point out that the area is not predominantly office or commercial in character.

Mr. Lukasik had a question about the number of toilets, sinks and shower rooms. Mr. McDonough said the numbers were provided to Pilot's Design Team for review before presentation. They were based on what he culled from testimony that had been provided by the architect, engineer, traffic engineer and the rest of the Team. Mr. Lukasik asked about the convenience store, listed in the 1994 Resolution, never having been built out. Mr. McDonough emphasized that the expansion of the convenience store did not happen. Mr. Lukasik said he didn't believe the store was originally approved. Mr. McDonough said he looked at the Resolution and it said retail store was an existing use on the premises.

Mr. Bischoff asked for questions from the Public. John Corcoran, 17 Midvale Drive, said the comparison table was quite thorough. He asked if an attempt had been made to quantify the number of contracts with trucking companies that Johnny's has, versus the number that Pilot has. Mr. McDonough said that would be a question for the operator. Mr. Corcoran asked if there was such a thing as use capacity. Mr. McDonough said intensification would certainly be a consideration for the Board and from a zoning standpoint, it is a reason Pilot is here. Mr. Corcoran asked if it was possible that Pilot's customer base would exceed the proposed building. Mr. McDonough said that with

respect to traffic, environmental impact and the like, that it would not; however, based on truck contract data, he said "Yes".

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David Stern, asked Mr. McDonough to comment on the profit margin for the fuel and convenience store. Mr. McDonough said profit is an operational question. Mr. Stern said he would be glad to submit facts of what has been seen in other fueling stations. Atty. Gross asked that members of the Public ask questions and not make statements because they are not under oath. Mr. Bischoff told Mr. Stern he was allowed to ask questions regarding Mr. McDonough's testimony. There would be an opportunity to make statements for the record. Mr. Stern asked if the increase in traffic had been monitored in the last couple of weeks. Mr. McDonough said "not quantifiably". Mr. Stern asked if an effort would be made to do that before the Board votes. Mr. McDonough said he did not know. Mr. Bischoff said that question could come up in the future. Mr. Stern had a question about the potential for increased crime. Mr. McDonough said an increase in crime would be bad PR and he felt that the site operators would keep crime to a minimum. Mr. Stern asked about quantifying the increase in crime since there will more traffic. Mr. McDonough said he did not know how to quantify an increase. Mr. Stern asked if it was in the public's interest to expand an existing site. Mr. McDonough said those matters are part of Master Planning. Mr. Stern had concerns about the increase in traffic from the time Johnny's was approved. Atty. Gross said Mr. Stern was assuming there had been a discussion when Johnny's was built and there is nothing in the record to indicate that.

Aleta Lambert, 10 Grove Road, asked Mr. McDonough if he had the original layout of Johnny's. He said "No". Ms. Lambert asked the location of the existing convenience store. Mr. McDonough said it is behind the restaurant. Ms. Lambert said she had stopped to buy a candy bar and could not find the convenience store. Employees could not direct her to the store. Pilot was taking over at the time and Ms. Lambert found some chips on a rack. Mr. McDonough said he had not taken an inventory at the time of his visit to the convenience store. Ms. Lambert asked Mr. McDonough if he was aware of the expansion of the store. He said he had been at the building today and in the past.

Robert O'Neill, N.J. Watershed Protection Specialist for N.J. Water Supply Authority, asked Mr. McDonough if the approved plans to expand the building were not executed and did he know if the engineering staff relied on those plans to create the new plan for further expansion, or was the existing building as shown on the plans in front of the Board field measurements of actual conditions? Mr. McDonough said he did not know the answer. Mr. O'Neill said, that depending on the answer, the complexity of the application could change. One would be an expansion and one might not be. Mr. Bischoff asked if there was a witness who could answer Mr. O'Neill's question. Atty. Gross said he didn't know. The engineers drew the plans. Mr. Gross said he understood they were based on the existing building, not the approved building.

Michele McBride, 10 Old Forge Lane, had questions about the Planning Analysis, dated February 5, 2007. She asked Mr. McDonough if he had traveled the length of Route 173 from Exit 13 to Exit 12 and observed various types of developments along the road. She asked the location of the contractor's yard and the light industrial building mentioned in the Analysis. Mr. McDonough said his testimony didn't mention Exit 12 and 13. The contractor's facility is on the western side of Route 173 and the light industrial building is to the west of Exit 12. Mr. McDonough said he considered the Veterinary Clinic a Commercial Use. He did not know the number of lots between exit 13 and 12 that are Commercial or Office Use. Ms. McBride said there are five Commercial and five Offices. She also observed seven residential or combination office/residential units. Mr. McDonough did not know the exact number of vacant lots or park land. Ms. McBride asked if it would be fair to note the substantial number of Professional Office Buildings and Residential presences along the corridor. Mr. McDonough said he noted the character of the area is mixed.

Ms. McBride asked Mr. McDonough to describe the surrounding land use around Pilot and if he knew who owned the land. He said it is State open land for watershed management. Ms. McBride asked Mr. McDonough if he had read Carl Hintz's report dated June 16, 2006, most specifically Page 6 which noted the Spruce Run Initiative Study supported rezoning the area to decrease impacts on the reservoir. Mr. McDonough said he had not read the Corridor Study. He said his analysis focused on environmental impact. Ms. McBride said the Planning Board spent a lot of time putting together the special zoning. Mr. McDonough said he recognized the present zoning of the property. He said the analysis is based on what's there now versus what the applicant is proposing. Ms. McBride said the Analysis stated the Reservoir was over a mile away to the north and that measurement conflicts with the N.J. Watershed Authority letter that states it is 3,000 feet away. Mr. McDonough said he had not taken the measurement. Ms. McBride asked Mr. McDonough if he was aware that the Johnny's Truck stop building had been called a landmark in the Star Ledger. Mr. McDonough said he had seen nothing of that sort in the N.J. State Register and it isn't mentioned in the Township MP. Ms. McBride said if the building had been properly maintained and updated it could have been used for a family restaurant, diner, community center, clinic or office. Mr. McDonough said there are a plethora of uses that could be there. He said there were alternatives to tearing the building down. Ms. McBride asked about the correct number of truck parking spaces. Mr. McDonough said 72 is the correct number.

Ms. McBride asked about the Moskowitz definition of a Travel Center which states that a Center has a gasoline station, fast food restaurant and convenience store on the same lot. She said Pilot is proposing more than the typical Center. Mr. McDonough said there will be a truck stop component and the home heating oil facility. Ms. McBride asked if truck

parking would be considered in the Moskowitz definition of a Center. Mr. McDonough said it is in the definition of a travel plaza and he believes the two are interchangeable.

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Ms. McBride said Mr. McDonough stated there will be fewer showers and less toilets and that does not jive with Mr. Stout's testimony. Mr. McDonough said he did not have the numbers in front of him. Ms. McBride asked how the expansion of the non-conforming use would benefit Union Township. Mr. McDonough said the site would serve both regional and community needs and the proposal to make improvements including lighting, landscaping and utilities would be a betterment. Ms. McBride asked if he felt the site was a safe and appropriate location for a truck stop. Mr. McDonough said "Yes". Did he think that residents, school children or school bus drivers considered the site safe? Mr. McDonough said he couldn't speak for the public-at-large. Ms. McBride asked if Mr. McDonough thought people visiting Spruce Run would consider the site appropriate. Mr. McDonough said he had concerns. The Board members are stewards of the Township Zoning and there are several Board Professionals who are watch dogs for environmental concerns, planning concerns and the like. Mr. McDonough said he had not heard anything so far as reports put forth by applicant's professionals. He said Pilot will comply with storm water regulations even though they are not bound by the regulations. Ms. McBride asked if the convenience store and restaurant were not there, how much gas and diesel business might be lost. Mr. McDonough said that was an operational question. Pilot does expect an increase in the fuel business with the intensifying of uses with the restaurant building. Ms. McBride asked which of the variances would alleviate traffic jams. Mr. McDonough said there are no variances requested as far as traffic is concerned. He also said Mr. Staigar had opined that the proposal will improve the traffic situation. Ms. McBride asked which variance would provide better queuing. Atty. Gross said that was not a fair question, since the application is not just for variances. It is also a site plan application. Mr. Staigar said if approval was granted a number of steps would be taken to accommodate the increase in traffic. Ms. McBride asked if the changes would be under the control of the BOA. Atty. Gross replied in the affirmative.

Ms. McBride asked about the NJDOT access permit application. Atty. Gross said access onto Route 173 must be approved by the NJDOT because it is a State highway. Parking, internal circulation and certain traffic improvements are within the Board's purview. Ms. McBride asked if the NJDOT did not approve the access, would Pilot be able to make changes to the queuing pattern. Mr. McDonough thought that would be a condition of outside agency approval. If the outside agency approval fails the application would also.

Aleta Lambert asked that the photograph of the convenience store be entered into evidence. The photo was taken on February 28, 2007 by a friend. Atty. Sutphen marked the photo O-1, with a notation that it was taken in the presence of the witness. Atty. Gross said that when an exhibit is marked it is usually subject to cross and when the witness testifies they would be subject to questioning. Mr. Bischoff and Atty. Sutphen

asked Atty. Gross if he wanted to cross examine Ms. Lambert. Mr. Gross said he had no questions at this time.

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Tom Apostolik asked about the proposed change of traffic flow from clockwise to counter-clockwise and if the Board had to approve changing the entrance and exit signs. Atty. Gross said his client tried to expedite Hearings by asking for special meetings. He noted that Mr. Staigar basically said this would happen if the plan wasn't approved. Mr. Gross did not think Pilot could make changes in the driveways without NJDOT approval and the Board's approval. Atty. Sutphen said the Board not only has the right of review of traffic on the site and the way it circulates on the site, but is also has the right of review of ingress/egress and that would include driveways. Mr. Sutphen said if the driveways are subject to NJDOT approval, they would have to have that approval.

Mr. Apostolik asked if the earlier than anticipated takeover of the site by Pilot was a part of the plan. Mr. McDonough said not that he was aware of. It told him that Pilot likes the site and it meets their criteria. Mr. Apostolik referenced Mr. Kirkpatrick's question about removal of the truck repair facility and Mr. McDonough's comment that the repair facility was not a necessary aspect of the site because other places could repair trucks. Mr. Apostolik asked if trucks could get fuel in other places. Mr. McDonough said "Yes". Mr. Apostolik asked Mr. McDonough if he was a Union Township resident, which side would he be on. Mr. McDonough said that was a personal question. Mr. Bischoff said it was not appropriate. Atty. Gross agreed with Mr. Bischoff. Mr. Bischoff said the purpose of the Hearing and purpose of cross-examining the witness is to give an opportunity to ask questions about testimony; nothing else, no statements, no posturing and no opining. There will be a public session when testimony, opinions, evidence and exhibits can be offered.

Aleta Lambert said she had stopped to get a soda and a gentleman came in complaining to another man that he was out manning six pumps while the other man was sitting on his a double squiggle. Did Mr. McDonough think that kind of language would improve the quality of life in Union Township? Mr. McDonough said that would be a question for operations. Atty. Gross told Ms. Lambert to call his office and she would be given a number where to call. Ms. Lambert said Mr. Mulligan was in the building at the time. Atty. Gross said Mr. Mulligan may have taken action already.

Betsy Piner asked Mr. McDonough to tell her about the increase in ratables. Mr. McDonough said he believed he had said approval would have a positive fiscal impact. Ms. Piner said she had talked to tax people and was told it would an extremely nominal ratable increase. Mr. McDonough said he saw the project as a betterment. Ms. Piner asked about Mr. McDonough's statement that crime would be incidental. She wondered if that would be incidental to you or to the 650 school children a thousand feet away. Mr. McDonough said he thought it was incidental to the use and location. He said motorists

would pull off when in need and call police. Police would file reports and that is what applicant looked at. Ms. Piner said it makes her mad because 650 school children will get to witness an increase in incidental crime.

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Mr. Piner asked if Mr. McDonough had been at or near the site at 3:30 in the afternoon. She had a problem because of traffic backing up on the Interstate. Mr. McDonough said he had been on the site at that time. Brian Dorr, 6 David Reynolds Road, asked about the existing type and wattage of the lighting. Mr. McDonough said they are high wattage flood lights and are directed outward, as opposed to proposed downward lighting. Mr. Dorr asked the proposed type and wattage of the fixtures. Mr. McDonough said he did not know. Mr. Dorr asked the difference between a 250 watt high pressure sodium versus a 400 watt metal halogen light. Mr. McDonough said that high pressure sodium produces a yellow light and the metal lights would produce a whiter light. Mr. Dorr asked about the existing 50 foot high pressure sodium lights. Mr. McDonough did not think they were high pressure sodium lights. Mr. Dorr asked if the illumination study had been completed. Mr. McDonough said there had been an illumination grid as part of the plans. He said the proposal would bring the lights more into conformance with the Ordinance.

Arthur Nevins, 41 Charlestown Road, asked Mr. McDonough if he had testified for Pilot before. Mr. McDonough said he had testified at the Mahwah location. He had not been at Pilot locations in Scranton or Binghamton. Mr. Nevins asked if Mr. McDonough was aware that the only way you can cross Route 78 between exit 15 and 11 is by Exit 12. Mr. McDonough said he did not believe that was true. He recalled there was a bridge that goes across Route 78. Mr. Nevins asked if Mr. McDonough had counted the residents within two to three miles or any distance to the north or south of Route 78 between exit 15 and 11. Did he have any idea how many residents there are? Mr. McDonough said "No". He said he was not a traffic expert. Mr. Nevins thought that Mr. McDonough was aware that Union Township did not have a Police Department. Mr. McDonough said he was not. He had, however, solicited police reports for the analysis and the categories that he saw repeatedly involved motorists in need. Mr. Nevins told Mr. McDonough that he really didn't know from the reports what goes on in the community with incidents related specifically to truck traffic.

Mr. Scott arrived at 8:55 p.m.

Mr. Bischoff announced that a break would be taken at this time (9:00 p.m.). The Hearing reconvened at 9:10 p.m.

Mr. Bischoff asked for additional questions from the Public. Matt Mulhall, Country Acres Drive, referenced the Settlement Agreement between the Township and the Planning Board and applicant regarding the maximum usage of 3,273 gallons of water per day (gpd). Mr. Mulhall asked if the Board was willing to waive the need for an Aquifer Tests Analysis or did Pilot intend to submit the Analysis and/or data showing

they were not using more than the 3,272 gpd. Mr. Mulhall also asked if Pilot installed the calibrated water meters to measure water usage as of February 28th, 2007, the date Pilot took possession of the property. Atty. Gross said he didn't know.

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Mr. Mulhall then asked the Board to make a decision tonight about waiving the requirement for the Aquifer Test. Mr. Bischoff recalled the Settlement Agreement was specific that once Pilot took possession of the property they would do the Aquifer Test. Atty. Gross said he will look into the matter. He assured Mr. Mulhall that his concerns would be considered and the Board would not waive the Aquifer Test requirement. Mr. Mulhall asked about the convenience store as it relates to the June 24, 1993 Resolution. Mr. McDonough said the Resolution acknowledges that applicant proposed continuation of the existing uses, including a retail shop. Atty. Gross said the transcript did not show that Mr. McDonough testified that the Resolution approved a convenience store. Mr. Mulhall acknowledged it was his understanding from Mr. McDonough's testimony. Atty. Sutphen said the Resolution stated that applicant proposed adding a convenience store, etc. Atty. Gross concurred with Mr. Sutphen. Mr. Mulhall said applicant was proposing that operation and testimony by Mr. McDonough in response to Mr. Lukasik's question was that the store was not constructed. Atty. Gross said that was correct. Mr. Mulhall said there was no approved convenience store at the site. Mr. McDonough said the use was validated. The Resolution mentioned the proposal was to expand the convenience store aspect of the retail store. Mr. Mulhall said the Resolution noted the approval would lapse if not completed within 60 days. Mr. Scott emphasized the voiding of the approval unless an extension was granted by the Board in advance of the expiration. Atty. Gross said there may be a misunderstanding. He said applicant was not alleging that they had a right to expand the building because of the prior approval. Mr. Scott asked if applicant was not offering to establish the pre-existing use for a convenience store. Mr. McDonough said the Resolution recognized in its findings that there was a retail component.

Mr. Scott referenced the definitions for retail versus a convenience store, as set forth in the Land Use Ordinance. Mr. McDonough said he would have to review that issue. His point was that a travel center is the present use and he feels that a retail shop and a convenience store fall within the umbrella of a travel center. Mr. Bischoff noted that Mr. McDonough had said there would be a truck accessory-retail shop and that didn't sound like a convenience store. Mr. McDonough believes they are within the travel center umbrella. Mr. Mulhall said Mr. McDonough stated his job as a planner was to evaluate uses of the site with respect to all New Jersey residents, not just local residents. Mr. McDonough said "Yes", planning must be comprehensive. Mr. Mulhall asked if there was a lack of truck stops in the area and if there was an absolute need for a truck stop at this location. Mr. McDonough said the site is suited for a truck stop. Mr. Mulhall said there are two truck stops within five miles and a third within one mile of the site. Mr. McDonough said the demand is shown by use of the facilities. Mr. Scott said there are two federally funded rest stops nearby (Jugtown Mountain) and another just over the river in Pennsylvania. Atty. Gross asked the relevance of those statements. Mr. Scott

said it had to do with a regional need. Atty. Gross indicated the number of travel centers in the area was irrelevant. He said Pilot is here and will be staying whether the Board likes it or not. Mr. Mulhall said his question was not irrelevant.

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Atty. Gross asked for a ruling from the Board. Mr. Bischoff made a ruling. He said Mr. McDonough testified there is a regional need. Mr. McDonough acknowledged there is a plethora of similar uses in the area but there remains a demand of the use at the Pilot location. Mr. Mulhall said Mr. McDonough had testified that he had not evaluated the Spruce Run (SR) Corridor study. Mr. McDonough said he had only evaluated the Township Zone Plan and Ordinance which acknowledged the SR study and the environmental considerations which led to rezoning of the property. He said applicant is proposing an environmental betterment and while the use may be disfavored by Ordinance, it is not prohibited from continuing in its current context with all the environmental problems in place now. Mr. Mulhall said Mr. McDonough had testified that it is Pilot's intention to see an increase in business and that would create additional environmental impact. Mr. Mulhall asked if that was correct. Mr. McDonough said absolutely and that was why there has been hours of expert testimony on both sides of the dais.

Mr. Mulhall asked about the proposal to upgrade the septic system. Would it be a replacement system for a failed system? Mr. McDonough said he would defer that question for the expert on the subsurface system. Mr. Mulhall said there was nothing in the system that would allow for removal of contaminants other than just sanitary wastewater. Atty. Gross objected to the question since there had been no testimony that the system had failed. Mr. Gross said the expert had testified and was available for cross examination. Mr. Bischoff said "Sustained". Mr. Mulhall asked if prior to February 28th, 2007, the convenience store, restaurant, gasoline station, truck stop, motor vehicle repair and home heating oil facility were all owned and operated by Johnny's Truck Stop or Hilltop Fuel Company? Mr. McDonough understood that was correct. Mr. Mulhall asked the ownership and operation of each of the uses with Pilot. Mr. McDonough said that he understands the difference would be with the home heating oil business. Pilot would own the space and there would be an easement granted. He said that is an operational question and the question would be deferred. Mr. Mulhall said there was a good chance of multiple tenants/businesses on the site, at the same time. Mr. McDonough said he did not know that for a fact. The proposal is to eliminate the motor vehicle repair facility. Mr. Scott asked Mr. McDonough if he agreed that the home fuel oil distribution would be a separate use and that it has no relationship to the operation of a travel center. Mr. McDonough agreed with Mr. Scott. He said the two uses have co-existed for 46 years.

Mr. Scott said that was not his question. He wanted to know if Mr. McDonough saw any relationship between the operation of a home fuel distribution business and the proposed travel center. Mr. McDonough said other than the fact that both uses rely upon fuel

deliveries and underground fuel storage tanks. Mr. Bischoff asked for a no or a yes. Mr. McDonough said it was a qualified yes.

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Mr. Scott asked if Mr. McDonough thought it would be appropriate for the Board to impose a condition that would mitigate multiple uses. Mr. McDonough said the Board has the power. He said the Board had a golden opportunity to impose conditions on those two uses to co-exist together in a better way. Mr. Scott asked about eliminating the use. Mr. McDonough said that is not proposed. Mr. Scott asked about the elimination being a condition. Mr. McDonough said testimony had been given that the two uses would not rise to the level of substantial and from a planning standpoint he did not see the elimination as necessary.

Kathy Corcoran, Highland Ridge, asked Mr. McDonough if he thought it was a good idea to have a truck travel center and residential activities such as schools in the same community. Mr. McDonough said there are imposed separation standards and the typical standard would be 200 feet. There are only two buildings within 200 feet and they are both commercial. Ms. Corcoran asked Mr. McDonough if he had reviewed the MP with regard to support facilities for crime prevention. He said "No". Ms. Corcoran said she believed most people visiting the Travel Center would be coming from the East, maybe trucks would come from the Port. Mr. McDonough agreed. Ms. Corcoran asked if visitors would get gas, visit the convenience store and use the bathroom? Mr. McDonough didn't think that everybody would use the bathroom. He said the use of the facilities would happen. He could not quantify how many people would use them. Ms. Corcoran asked about the water usage. Was it still planned to be maintained at 3,273 gpd? Mr. McDonough said that was in his consideration.

Mr. Scott asked Mr. McDonough to cite the Case Law that defined a neighborhood as 200 feet. Mr. McDonough said that was Statutory Law. Mr. Scott said there was no section in Statutory Law that defines neighborhood. He said Mr. McDonough was construing the neighborhood based upon what the Statute requires in terms of notes to adjacent property owners. Mr. McDonough said his experience has been that qualifies as the neighborhood. If there is Case Law he would have to find it.

Atty. Douglas Janacek, representing INO Therapeutics, began cross examination. Mr. Janacek referenced the June 24, 1993 Resolution (Exhibit A-27) with regard to the convenience store. He asked Mr. McDonough to describe the truckers' store as it existed in 1993. Mr. McDonough said he spoke to the owner about that and was told the components of a convenience store and truckers store were similar. Mr. McDonough had not been at the site in 1993. Atty. Janacek asked that Mr. McDonough's testimony be stricken from the record since it was hearsay. Atty. Gross said Mr. McDonough was an expert and gathered information from various sources. Mr. McDonough had answered Atty. Janacek's question. Mr. Janacek contended it was not expert testimony. Mr.

Bischoff overruled Atty. Janacek's request on the basis the evidence standards for this kind of hearing are relaxed.

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Atty. Janacek asked Mr. McDonough to describe what a patron to Johnny's encounters when opening the front doors on say February 25th, 2007. Atty. Gross objected. He did not know the relevance to the application. Mr. Janacek said there has never been any clear indication as to what really exists or what did exist at Johnny's. He said the Board needs to know what existed to determine whether there is an expansion and whether a proposed new use variance is required. Mr. Bischoff said "Sustained". Atty. Janacek asked Mr. McDonough if he could answer the question. Mr. McDonough said "Yes". "I essentially can". Mr. Bischoff said "Sorry, I'm overruling the objection". Atty. Janacek asked if the Board didn't want him to ask a question as to what exists at Johnny's. Atty. Sutphen indicated the Board would allow questions. Mr. McDonough said the Board had overruled Atty. Gross so he had to answer. Mr. McDonough said there is a counter with approximately a dozen seats. The restaurant has 75 seats. Mr. McDonough has seen people seated at the tables eating; however, he had not observed a waiter or waitress bring food to the tables. He was not familiar with Johnny's menu. Mr. McDonough said the retail truckers store (about 700 square feet) had a snack rack, dry goods, stationery, vehicular supplies, books, maps and the like in that component. Mr. McDonough said there was a lounge with a television and chairs, vending machine and a phone area.

Atty. Janacek went on to March 22nd, 2007. The truckers' lounge listed above has been filled with convenience items. Mr. Janacek asked for more details. Atty. Gross objected. He didn't know the relevance of what was there since Pilot took possession. Atty. Janacek felt there was relevance between what existed and what is there today. Atty. Gross asked to respond. Mr. Bischoff told him to proceed. Mr. Gross said the prior existing non-conforming use is the subject of an application to the zoning officer. In addition, the standard was the use when the ordinance was changed in March 2006. Atty. Gross said that was the relevant date. Atty. Janacek did not agree with Mr. Gross. He said applicant constructed a convenience store without the benefit of a zoning permit. Atty. Gross said it is Pilot's position that they are operating within the law. Mr. Gross said Pilot is asking the Board to act on the application before it. Atty. Janacek said the application is for expansion of a pre-existing non-conforming use as it exists today, not as it existed at some point two or three years or even one year ago. Mr. Bischoff asked Atty. Janacek if he would like a ruling. Mr. Janacek said "Please". Mr. Scott said the Chairman is willing to sustain the objection. Mr. Scott said what is relevant is what existed prior to this application. He said the question could be rephrased to refer to the operative time period. Mr. Scott thought Mr. McDonough would be able to answer that question. Atty. Janacek appreciated the ruling. Atty. Sutphen was in agreement.

Atty. Janacek said he would focus on Mr. McDonough's reports dated January 17th and February 5th, 2007. He asked Mr. McDonough to explain what was not current in the

January 17th report. Mr. McDonough said the January report gave proofs towards a D-1 Variance. After January 17th, he received the Resolution (A-27) and changed his report to steer it towards a D-2 Variance.

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Mr. McDonough also said that at the Hearing between January 17th and February 5th, Mr. Staigar testified with respect to additional traffic and it was important that the report reflect his testimony that there would not be substantial detriment in terms of traffic. Mr. Bischoff asked Atty. Janacek how much more time he would need for questioning. Mr. Janacek said maybe two hours. Mr. Bischoff said that would not happen tonight. Atty. Janacek asked Mr. McDonough about his statement that the site is situated at the jurisdiction of three major roadways, Charlestown Road, Route 173 and Route 78. Did he mean to say all three roadways are comparable as major roadways of similar nature? Mr. McDonough said his emphasis was that applicant was not dealing with local roadways. Atty. Janacek asked the number of lanes for the roadways. Mr. McDonough said Charlestown Road has one lane each way, Route 173 has one lane each way and Route 78 has multiple lanes each way. Atty. Janacek asked if Mr. McDonough's statement that Route 78 has an average daily traffic count of 81,000 vehicles was for weekday or weekend traffic. Mr. McDonough did not know. He thought that number came through Mr. Staigar's report or testimony. Atty. Janacek concluded his questioning at this time.

Atty. Gross had a housekeeping matter that he reserved until Mr. Scott was present. He referenced the Kruhl case and wanted the record to reflect the case was an Appellate Division decision.

Mr. Bischoff announced the Hearing would continue on April 26, 2007. No further notice is required. Mr. Bischoff said Mr. McDonough needed to be at that Hearing.

Mr. Lukasik made a motion to adjourn. Mr. Kirkpatrick seconded the motion.

(10:10 p.m.)

Vote: All Ayes

Grace A. Kocher, Secretary